

**BEFORE THE STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI**

In the Matter of the Application of:

Brok Phillip Dickey

ORDER ISSUING A PROBATED EMBALMER LICENSE

The Missouri State Board of Embalmers and Funeral Directors (the “Board”) pursuant to Section 324.038, RSMo¹, issues this order granting a **PROBATED EMBALMER LICENSE** to Brok Phillip Dickey (“Dickey” or “Licensee”), 26109 S. Skyline, Harrisonville, Missouri 64701.

As set forth in Section 324.038, RSMo, Licensee may submit a written request for hearing to the Administrative Hearing Commission seeking review of the Board’s decision set forth in this Order. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date the Board mails this Order to Licensee. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. Any such request should set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to Licensee’s profession. If such review is

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the hearing, Licensee shall have the right to present testimony, call witnesses on its behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board and make legal argument to the Commission. Following the hearing, the Administrative Hearing Commission will issue an order including findings of fact, conclusions of law and a decision based on the evidence admitted at the hearing. A copy of the Administrative Hearing Commission's order will be delivered to the parties. Chapter 536, RSMo, sets forth the procedures for review of the order of the Administrative Hearing Commission.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Section 324.038.2, RSMo. Should Licensee make written request for review of this Order, the terms and conditions of this Order shall remain in full force and effect unless and until such time as the Administrative Hearing Commission or reviewing court orders otherwise.

Relevant Statutes

1. Section 324.038, RSMo, authorizes the Board to issue a license subject to probation in lieu of denial and states:

1. Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

2. Section 333.021.1, RSMo, requires a license to engage in the practice of embalming and states:

No person shall engage in the practice of embalming in this state unless he has a license as required by this chapter.

3. Section 333.041.3, RSMo, sets forth the requirements for licensure as an embalmer and requires every applicant for a full embalmer's license to serve an apprenticeship of not less than twelve consecutive months and states:

3. Each applicant for a license to practice embalming shall furnish evidence to establish to the satisfaction of the board that he or she:

(1) Is at least eighteen years of age, and possesses a high school diploma or equivalent thereof;

(2) Is either a citizen or bona fide resident of the state of Missouri or entitled to a license pursuant to section 333.051, or a resident in a county contiguous and adjacent to the state of Missouri who is employed by a funeral establishment located within the state of Missouri, to practice embalming upon the grant of a license to do so;

(3) Is a person of good moral character;

(4) Has graduated from an institute of mortuary science education accredited by the American Board of Funeral Service Education, or any successor organization recognized by the United States Department of Education, for funeral service education. If an applicant does not appear for the final examination before the board within five years from the date of his or her graduation from an accredited institution of mortuary science education, his or her registration as a student embalmer shall be automatically canceled;

(5) Upon due examination administered by the board, is possessed of a knowledge of the subjects of embalming, anatomy, pathology, bacteriology, mortuary administration, chemistry, restorative art, together with statutes, rules and regulations governing the care, custody, shelter and disposition of dead human bodies and the transportation thereof or has passed the national board examination of the

Conference of Funeral Service Examining Boards. If any applicant fails to pass the state examination, he or she may retake the examination at the next regular examination meeting. The applicant shall notify the board office of his or her desire to retake the examination at least thirty days prior to the date of the examination. Each time the examination is retaken, the applicant shall pay a new examination fee in an amount established by the board;

(6) Has been employed full time in funeral service in a licensed funeral establishment and has personally embalmed at least twenty-five dead human bodies under the personal supervision of an embalmer who holds a current and valid Missouri embalmer's license or an embalmer who holds a current and valid embalmer's license in a state with which the Missouri board has entered into a reciprocity agreement during an apprenticeship of not less than twelve consecutive months. "Personal supervision" means that the licensed embalmer shall be physically present during the entire embalming process in the first six months of the apprenticeship period and physically present at the beginning of the embalming process and available for consultation and personal inspection within a period of not more than one hour in the remaining six months of the apprenticeship period. All transcripts and other records filed with the board shall become a part of the board files.

4. Board regulation 20 CSR 2120-2.010(12)-(15) and (19) sets forth the process for serving an embalmer apprenticeship and states:

(12) After the applicant has made a passing grade on the National Board Funeral Service Arts section and the National Board Funeral Service Science section of the embalming examination, s/he then may apply for registration as an apprentice embalmer. In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory, or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination. This application shall contain the name(s) of the Missouri licensed embalmer(s)

under whom s/he will serve. Each supervisor must be licensed and registered with and approved by the board. Any change in supervisor shall also be registered and approved within ten (10) business days after the change has been made. Applications shall be submitted on the forms provided by the board and shall be accompanied by the applicable fee. Application forms are available from the board office or the board's website at <http://pr.mo.gov/embalmers.asp>.

(13) Each apprentice embalmer shall provide to the board, on the application provided by the board, the name(s), location(s), and license number(s) of the licensed funeral establishment(s) where s/he is serving as an apprentice. If the apprentice embalmer begins work at any other licensed funeral establishment during the period of apprenticeship, the apprentice embalmer shall notify the board, on the form provided by the board, within ten (10) business days after the change has been made.

(14) The period of apprenticeship under this rule shall be at least twelve (12) consecutive months. The apprentice embalmer shall devote at least thirty (30) hours per week to his/her duties as an apprentice embalmer. During the period of the apprenticeship, the certificate of registration issued to the apprentice shall be displayed, at all times, in a conspicuous location accessible to the public at each funeral establishment where the apprentice is working.

(15) Prior to completion of the period of apprenticeship, the apprentice embalmer shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam. This exam may be taken any time after graduating from an accredited institution of mortuary science, but shall be successfully completed prior to appearing before the board for oral examination. The Missouri Law exam covers knowledge of Chapter 333, RSMo, and the rules governing the practice of embalming, funeral directing, and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition, and transportation of dead human bodies. The Missouri Law section also contains questions regarding Chapter 436, RSMo, relating to pre-need statutes and Chapters 193 and 194, RSMo, relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements as they apply to Missouri licensees. Notification of intent to take this section of the examination shall be received by the

board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.

(16) An affidavit provided by the board, signed by both the apprentice and the supervisor(s) verifying that the applicant has successfully completed the embalming of twenty-five (25) dead human bodies, shall be submitted to the board at the time of completion of the apprenticeship period and prior to the oral examination.

* * *

(19) After satisfactory completion of these requirements, an embalmer's license shall be issued to an apprentice embalmer upon payment of the applicable fee and subject to the provisions of section 333.121, RSMo.

* * *

5. Section 333.330, RSMo, authorizes the Board to deny an application for an embalmer's license and states, in relevant portion:

1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use

impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

Parties and Background

6. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.

7. Brok Phillip Dickey is an individual who has registered his address with the Board as 26109 S. Skyline Dr., Harrisonville, Missouri 64701.

8. Dickey submitted his "Application for Embalmer's License" to the Board that he signed before a notary public on June 24, 2013 (the "Application").

9. Dickey is over the age of 18 years.

10. Dickey has met the statutory requirements for licensure.

Basis for Probation

11. On the Application, Dickey answered "yes" to the question that stated:

8. Have you ever been arrested, charged with, found guilty, or entered a plea of guilty or nolo contendere by a court (including a municipal court), pled guilty or nolo contendere to any traffic offense resulting from or related to the use of drugs or alcohol, whether sentence was imposed, including a suspended imposition of sentence (SIS)? If yes, explain fully.

12. Dickey filed with the Board his “Attestation for Embalmers License” that he signed before a notary public on August 13, 2014 and the Board received on August 25, 2014 (the “Attestation”).

13. On the Attestation, he answered “yes” to the question that asked:

8. Have you ever been arrested, charged with, found guilty, or entered a plea of guilty or nolo contendere by a court (including a municipal court), pled guilty or nolo contendere to any traffic offense or ordinance violation resulting from or related to the use of drugs or alcohol. Whether sentence was imposed, including a suspended imposition of sentence (SIS)? If yes, explain fully and provide certified court documents (ie: Docket Sheet, Information nor Indictment and Final Disposition).

14. Along with the Application and the Attestation, Dickey provided a written explanation of the charges filed against him that stated:

I received a dwi on November 20, 2010 in Raymore, Missouri and on April 6, 2013 I received another dwi. Both of these charges are on the docket sheet that I have included in the envelope.

15. Court records from the City of Raymore, Missouri, confirm that Dickey plead guilty to DWI on April 21, 2011 and that he also plead guilty to DWI on June 20, 2013.

16. Dickey has used a controlled substance or alcoholic beverage to an extent that such use impairs his ability to perform the work of an embalmer.

17. The Board has cause to deny Dickey’s application for an embalmer’s license pursuant to Section 333.330.2 (1), RSMo.

18. The Board finds that issuance of a probated embalmer's license, subject to certain terms and conditions, in lieu of denial, will ensure protection of the public.

Issuance of Probated License Subject to Terms and Conditions

The Board, in lieu of denial, hereby issues an embalmer's license to Brok Phillip Dickey, on **PROBATION** for a period of **THREE YEARS** (the "Disciplinary Period") subject to the terms and conditions contained in this Order and set forth below.

Terms and Conditions of the Disciplinary Period

19. Licensee shall comply with the following terms and conditions of probation during the Disciplinary Period:

- a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address;
- b. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;

- c. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- d. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- e. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. These compliance reports shall contain all other information required by this Order and shall be filed on forms supplied by the Board, if Licensee fails to receive the form from the Board, Licensee shall have the duty to contact the Board to request the form. Licensee shall complete each compliance report truthfully, completely and accurately;
- f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active including not allowing any

license to be suspended for failure to comply with any revenue law of the state;

- h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation;
- i. Licensee shall provide any death care employer with a copy of this Order within 5 working days from the date of receipt of this Order and within 5 working days from the date of any new employment;
- j. Licensee shall not serve as the supervisor of any funeral director apprentice or embalmer practicum student or embalmer apprentice without the express written consent of the Board. If Licensee seeks to supervise an apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential apprentice and a description of Licensee's ability to properly supervise an apprentice. No such apprenticeship shall commence until the Board has given its consent for Licensee to supervise the apprentice;
- k. If Licensee is on probation pursuant to any court order, any violation of the court ordered probation, as determined by the applicable court, shall be deemed a violation of this Order. Licensee shall forward to the Board a copy of any such Court order within 10 days of any Court finding Licensee to be in violation of any court ordered probation.

20. Upon the expiration of the Disciplinary Period and successful completion of the probation, Licensee's embalmer's license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Licensee's embalmer's license.

21. The Board shall enter no order imposing further discipline on Licensee's embalmer's license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

22. If the Board determines that Licensee has violated a term or condition of this Order, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

23. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose further discipline on Licensee's embalmer's license. The

Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

24. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

IT IS SO ORDERED.

Dated: 9.8.14

Sandy Sebastian

Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors